

APPEAL-11-95

CITY OF BREMERTON
APPEAL OF PLANNING COMMISSION DECISION

APPEAL OF: WILLIAM J. SESKO Appellant
(Your Name)

3536 ARSENAL WAY, BREMERTON, WA. 98312
(Your Mailing Address)

377-0697
(Telephone Number)

ITEM BEING APPEALED: CEASE & DESIST ORDER
AT 1701 PENNSYLVANIA AVE, MAY 16, 95

Please provide a brief statement regarding your legal interest in the action being appealed. Use additional pages if necessary.

NATACHA & I OWN THE PROPERTY

Please provide a brief statement of the specific order or action protested, together with material facts claimed to support your contentions. Use additional pages if necessary.

THE PROPERTY HAS ALWAYS BEEN USED FOR STORAGE
SINCE IT WAS CHANGED TO B.P. FROM INDUSTRIAL.
SHORE LINE IS INDUSTRIAL. CRANE USE AND
REMEDIAL CLEAN UP COMPLY WITH BSMP AND
SHORELINE MANAGEMENT ACT. SEE ADDITIONAL PAGES

Please provide a brief statement of the relief sought and the reasons why the Planning Commission's decision/action should be reversed, modified or otherwise set aside. Use additional pages if necessary. PLEASE SET ORDER ASIDE. SEE ADDITIONAL PAGES

DATE: AUG 1, 95

William J. Sesko
Appellant's Signature

FEE: \$59.00 (Due with Letter of Appeal)

Appeals will be scheduled to be heard before the Bremerton City Council as soon as possible, allowing for adequate preparation and notice. You will receive written notification of the Council hearing date mailed to your address given above. The City Council decision is the final legislative decision.

I.SHORE MODIFICATION; CLEARING, GRADING, AND DRAINAGE

The shore modification at issue herein was a remedial action to stop degradation of the beach area from a dump previously established by the city of Bremerton and which was sluffing into the Port Washington Narrows.

II.BULKHEADS AND SEAWALLS

From my property the seawall is the result of stacking broken concrete along the foot of the bank that was strewn along the beach and bank to protect from erosion after the polluted soil from the dump was stockpiled inland. The ramp half the way down the bank was for access to remove the polluted soil from the shoreline. All of this is a temporary situation preceding a complete clean up which is exempted from the Shore Line Management Act.

II.COMMERCIAL AND INDUSTRIAL ACTIVITIES

The use of the property has been alleged to be that of a "Junk Yard". With this erroneous determination I respectfully disagree. The property is being used for storage and has been an ongoing use of the property for many years. This same issue previously received an adverse ruling from the city on February 2nd, 1995 and is currently under judicial appeal. Therefore, under the doctrines of res judicata and collateral estoppel the City of Bremerton is legally barred from this proceeding and the underlying action against me. Furthermore, these two causes of action should have been joined in one action and the City of Bremerton's failure to do so is costing me a great deal of time and energy in defending the same issues; This action here today should be barred for the City of Bremerton's procedural failure to join the causes of action.

§ 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.105D.080 Private right of action—Remedial action costs. Except as provided in RCW 70.105D.-040(4)(d), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively. [1993 c 326 § 1.]

Effective date—1993 c 326: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 326 § 2.]

Severability—1993 c 326: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 326 § 3.]

70.105D.090 Remedial actions—Exemption from procedural requirements. (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, 75.20, 90.48, and 90.58 RCW, and the substantive provisions of any laws requiring or authorizing local government permits or approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that

would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, 75.20.025, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section. [1994 c 257 § 14.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.900 Short title—1989 c 2. This act shall be known as "the model toxics control act." [1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.905 Captions—1989 c 2. As used in this act, captions constitute no part of the law. [1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.910 Construction—1989 c 2. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.915 Existing agreements—1989 c 2. The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding. [1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.920 Effective date—1989 c 2. (1) Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

*(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988. [1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988).]

*Reviser's note: Neither condition contained in subsection (2) was met.

70.105D.921 Severability—1989 c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not

the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government. [1971 ex.s. c 286 § 34.]

90.58.350 Nonapplication to treaty rights. Nothing in this chapter shall affect any rights established by treaty to which the United States is a party. [1971 ex.s. c 286 § 35.]

90.58.355 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 20.]

Severability—1994 c 257: See note following RCW 36.70A.270.

90.58.360 Existing requirements for permits, certificates, etc., not obviated. Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government. [1971 ex.s. c 286 § 36.]

90.58.370 Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited. All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application. [1989 c 171 § 11; 1987 c 343 § 5.]

Severability—1989 c 171: See note following RCW 43.83B.400.

Severability—1987 c 343: See note following RCW 43.83B.300.

90.58.500 Mt. St. Helens eruption—Exemption from emergency recovery operations—Compliance with objectives required—Sediment retention structure, exemption—Expiration of section. Emergency recovery operations from the Mt. St. Helens eruption authorized by RCW 36.01.150, 43.01.200, and 43.01.210 may be exempted by the applicable county legislative authority from the requirements of the Shoreline Management Act of 1971, chapter 90.58 RCW, for operations within such county: PROVIDED, That the applicable legislative authority shall promptly notify the department of ecology within five days of the emergency action taken and the emergent nature of the problem. The notification shall be made to the water

resources district supervisor of the southwest region of the department of ecology. The county shall comply with all substantive objectives of this chapter and shall consult with the department of ecology in the planning process.

The sediment retention structure to be built on the North Fork Toutle river by the United States army corps of engineers is exempt from the substantial development permit requirement under RCW 90.58.030(3)(e).

This section shall expire on June 30, 1995. [1989 c 213 § 6; 1985 c 307 § 9; 1983 1st ex.s. c 1 § 3; 1982 c 7 § 4.]

Severability—1983 1st ex.s. c 1: See note following RCW 43.01.200.

Severability—1982 c 7: See note following RCW 36.01.150.

90.58.550 Oil or natural gas exploration in marine waters—Definitions—Application for permit—Requirements—Review—Enforcement. (1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW 90.58.140(2);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

(3) Decisions on an application under subsection (2) of this section are subject to review only by the pollution control hearings board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW 90.58.160.

(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section. [1983 c 138 § 1.]

Ocean resources management act: Chapter 43.143 RCW.

Transport of petroleum products or hazardous substances: Chapter 88.40 RCW.



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office, 3190 - 160th Ave S.E. • Bellevue, Washington 98008-5452 • (206) 649-7000

September 23, 1994

CERTIFIED MAIL

Mr. William J. Sesko
5356 Arsenal Way
Bremerton, WA 98312

Dear Mr. Sesko:

Re: EARLY NOTICE LETTER #N-18-5031-000
Sesko Property
1700 Pennsylvania Ave., Bremerton, WA

I am writing to send you information the Department of Ecology has gathered regarding the above referenced property. As part of the process under the Model Toxics Control Act (Chapter 70.105D RCW), Ecology maintains a database of known or suspected contaminated sites. Based on available information, we have added this property to our database as a site suspected to be contaminated by hazardous substances.

Enclosed is a computer print-out summarizing information which we believe reflects the current status of this site. A legend has also been enclosed to help you interpret codes used in this report.

Please note that inclusion in the database **does not** mean that Ecology has determined you are a potentially liable person under the Model Toxics Control Act (MTCA).

If a cleanup action does not occur on this property, Ecology will conduct a more detailed inspection at a future time, that may include testing for contamination. After that, Ecology will be better able to assess what action will be needed and to establish a priority for this work under the formal MTCA cleanup process. At that time, the potentially liable person(s) would be determined and would be responsible for cleanup costs, including state oversight.

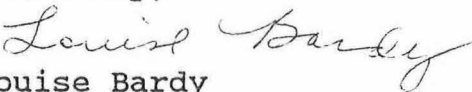
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It is Ecology's policy to work cooperatively with persons to accomplish prompt and effective site cleanups. Cooperating with the department in planning or conducting a remedial cleanup action is not admission of guilt or liability.

If you have any questions regarding this letter or if you would like a copy of Chapter 70.105D RCW (The Model Toxics Control Act) and the implementing regulations, Chapter 173-340 WAC, which detail these requirements please contact Joanne Polayes-Wien at (206) 649-7233 or Louise Bardy at (206) 649-7209. Thank you in advance for your cooperation.

Sincerely,


Louise Bardy
Toxics Cleanup Program

LB:lb
Enclosures